

ELLIS:LAWHORNE

John J. Pringle, Jr.
Direct dial: 803/343-1270
jpringle@ellislawhorne.com

June 25, 2004

VIA ELECTRONIC & 1ST CLASS MAIL SERVICE

The Honorable Bruce Duke
Executive Director
South Carolina Public Service Commission
PO Drawer 11649
Columbia SC 29211

RE: Universal Service Fund
Docket No. 97-239-C, *Our File No. 611-10192*

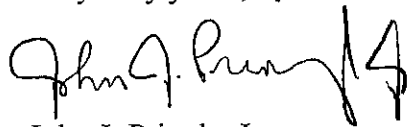
Dear Mr. Duke:

Enclosed is the original and ten (10) copies of the **Post-Hearing Brief of AT&T Communications of the Southern States, LLC and MCI** filed on behalf of AT&T and MCI in the above-referenced docket.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it in the enclosed envelope.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours, ,



John J. Pringle, Jr.

JJP/cr

cc: Gene Coker, Esquire
all parties of record

Enclosures

G:\APPS\OFFICE\WPWIN\WPDOCS\AT&T\TCG Certification\DukeApplication.wpd

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 97-239-C

IN RE:)
)
Proceeding to Establish Guidelines)
For an Interstate Universal Service)
Fund)
_____)

**POST-HEARING BRIEF OF AT&T COMMUNICATIONS OF THE SOUTHERN
STATES, LLC AND MCI**

AT&T Communications of the Southern States, LLC ("AT&T") and MCI metro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., and MCI WorldCom Network Services, Inc. ("MCI") hereby submit their post-hearing brief in the above-referenced Docket. In addition to this Brief, AT&T and MCI support the arguments provided in the Brief submitted by the South Carolina Cable Television Association.

AT&T and MCI continue to believe that an intrastate Universal Service Fund ("USF" or "Fund") is not necessary, appropriate or lawful, and submit this Brief without waiving that position. However, if incumbent local exchange carriers ("ILECs") are to be allowed to continue to draw from the USF, the ILECs must demonstrate, and this Commission must ensure that 1) "implicit subsidies" are indeed being eroded away by competition, creating the necessity for explicit USF distributions; 2) the current amount of "implicit subsidies" contained in ILEC rates when combined with USF distributions does not result in a "windfall" for the ILECs; 3) ILECs do not "over recover" from the USF due to demand stimulation resulting from rates being lowered; and 4) USF distributions are being used by the ILECs in a manner inconsistent with the

requirements of Section 58-9-280(I) of the South Carolina Code: namely, to “support the availability of basic local exchange service.” The ILECs do not have an “entitlement” to receive disbursements from the Fund. Because the applicants in this proceeding have not demonstrated any of the above requirements, this Commission should deny their requests for funding. Further, based upon the discussions that took place during the hearing in this matter, the Commission should ask the Staff to conduct a thorough investigation of the Fund and how it operates.

**The ILECs Have Not Demonstrated that Implicit Subsidies
are Being “Competed Away”**

If the purpose of the USF is to make explicit those implicit subsidies that have historically supported basic local exchange service when those subsidies are “eroded away” by competition (Tr. At Page 28, l. 21), then demonstrating where those implicit subsidies have been “competed away” is an essential precursor to recovery from the Fund. Commissioner Hamilton asked Alltel witness Eve “On the competition involved in your market where the funds are going to be used to reduce the rate, what’s the level of competition you are experiencing?” (Tr. p. 31, ll. 16-19). Ms. Eve provided no quantification for the competition that led to Alltel’s request for USF funding, and in fact none of the ILECs seeking funding in the current stage of this Docket even attempted to make such a demonstration. In response to the recitations by the Applicants that the USF statute does not require the showing of where and how competitive erosion is taking place in order to recover from the Fund, AT&T and MCI would point out that even Alltel agrees that the Commission is empowered and required to ensure that the Fund is “managed properly.” (Tr. pp. 25-26). Accordingly, a thorough review of the competitive pressures that trigger funding requests is necessary in order to ensure that the Fund is being managed properly. Because the ILECs have failed to make such a demonstration, their requests for funding must be denied.

**The ILECs Have Not Demonstrated that Their Recovery
from the Fund Does Not Result in a “Windfall”**

The size of the USF is based upon a dollar figure established by the Commission that represents the entire amount of “implicit subsidy” that existed in all the LECs’ rates at a particular point in time, presumably when the Fund was created several years ago. Accordingly, each ILEC in South Carolina is assigned a dollar figure that represents the total amount of funding to which that ILEC is entitled. That amount is equal to the implicit subsidy contained in the ILEC’s rates at a certain point of time that could become explicit subsidy if and when the ILEC has implemented all three “phases” of the Fund.

The total USF amount for each ILEC was a “snapshot” of its implicit subsidies taken at a specific point in time. That amount did not take into consideration additional implicit subsidies contained in a ILEC’s rates at the current time, as a result of (among other things) price increases, rollout of additional services, or line growth. If an ILEC has additional implicit subsidy built into its rates, then taking from the Fund results in a windfall to the ILEC. In other words, the Fund replaces \$1 of implicit subsidy with \$1 of explicit subsidy: If the LEC has a total of \$1.50 in implicit subsidies and lowers rates to recover \$1 dollar from the Fund, it still has \$.50 that supports basic local exchange.

None of the witnesses that appeared in this proceeding could testify whether or not their rates are providing implicit support at, above, or below the amount these companies are entitled to recover from the Fund. Therefore, none of the applicants could testify that the combination of the implicit subsidies contained in existing rates and Fund disbursements (representing explicit subsidies) did not result in a windfall subsidy recovery. Witness Starulakis indicated that an identification of all implicit subsidies contained in the LECs’ rates “could be done.” (Tr. p. 114,

1.3) The Commission must know the total amount of implicit subsidy contained in the LECs' rates in order to determine whether and how much explicit subsidy is allowed to come from the Fund, and must require the LECs to demonstrate same.

**The ILECs Have Not Ensured that Demand Stimulation
Does Not Result in an Overrecovery from the Fund**

When the price for a good or service is lowered, economics dictates that demand for that service will increase. In other words, if a price is lowered, more of a good or service will be sold. However, the Applicants testified that they do not take stimulation (how a lower price might affect revenue earned from a particular service) into account when determining how much they seek in disbursement from the Fund. (Tr. p. 99, ll. 10-11). Nor were the ILECs able to testify regarding the effect that USF-related rate reductions have on revenue earned from that particular service. (Tr. pp. 140, l. 22). Finally, the LECs have not provided information regarding the actual revenues resulting from rate reductions to the Commission, and no "true-ups" take place to account for demand stimulation. (Tr. p. 141, l. 5-p.142, l.19). If a LEC's rate reduction causes that LEC to earn more revenue than the LEC projects in connection with its USF disbursement, then the LEC again earns a windfall. The Commission must know whether this effect takes place in order to ensure that the Fund is being managed properly.

**The ILECs Have Not Demonstrated that Fund Disbursements are Employed
In Support of Basic Local Exchange Service**

A number of the Applicants in the current proceeding submitted loop costs that are *higher* than they submitted back in 1997 during a previous proceeding in this Docket, despite substantial line growth in their service areas. The Applicants testified that "increased investments" in their network are the result of "pushing fiber closer to the customers" for the purpose of providing

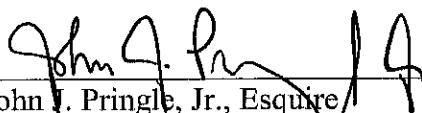
broadband services, such as digital subscriber line (“DSL”) service. (Tr. p.91, 1.25 – p. 93, 1.9). These advanced services clearly fall outside the definition of “basic local exchange service” found in Title 58 of the Code. The proposition that the Fund may be used by the Applicants and other ILECs to build their broadband networks should occasion a fundamental examination of the Fund and its purposes. Is the Fund “supporting” advanced services, and not basic dialtone? What policy goal is being served when a telephone consumer in Greenville funds a DSL, cable, or video rollout in Bluffton? Without sufficient evidence that the Fund is used for the purposes for which it was created, disbursements are not appropriate or legal.

Conclusion

Commissioner Wright raised the issues that go to the crux of this matter in his discussion with Mr. Lacoste at the close of the hearing: the Staff must examine the issues set out herein and those raised by other parties in this Docket, and the Commission must consider these and other weighty policy issues when the subject is a Fund that takes more than *47 million* dollars out of the pockets of South Carolinians each year. Despite the position of the Applicants and other ILECs in the state, the Commission has a great deal of authority and discretion to make sure the Fund is administered properly. AT&T and MCI encourage examination, investigation, and evaluation of the Fund, as well as audits for determination that the fees collected from South Carolina citizens are being used for proper purposes.

Respectfully submitted this the 25th day of June, 2004.

AT&T Communications of the Southern States, LLC



John V. Pringle, Jr., Esquire

ELLIS, LAWHORNE & SIMS, P.A.

1501 Main Street, Fifth Floor

PO Box 2285

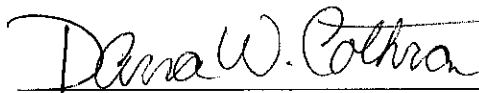
Columbia, SC 29202

(803) 254-4190

MCI WorldCom Communications, Inc.

MCI WorldCom Network Services, Inc.

MCIMetro Transmission Services, LLC



Darra W. Cothran, Esquire

WOODWARD, COTHRAN & HERNDON

PO Box 12399

Columbia, SC 29211

(803) 799-9772

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-239-C**

| | | |
|---------------------------------|---|-------------------------------|
| IN RE: |) | |
| |) | |
| Generic Proceeding to Establish |) | CERTIFICATE OF SERVICE |
| Guidelines for an Intrastate |) | |
| Universal Service Fund |) | |
| _____ |) | |

This is to certify that I have caused to be served this day, one (1) copy of the **Post-Hearing Brief of AT&T Communications of the Southern States, LLC and MCI** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed thereto and addressed as follows:

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
PO Box 752
Columbia SC 29202

Frank Rogers Ellerbe III, Esquire
Robinson, McFadden & Moore
P.O. Box 944
Columbia, SC 29202

Gene V. Coker, Esquire
AT&T - Law & Government Affairs
1200 Peachtree Street, NE
Suite 8100
Atlanta GA 30309

Faye A. Flowers, Esquire
Parker, Poe, Adams & Bernstein
PO Box 1509
Columbia SC 29202-1509

Scott A. Elliott, Esq.
Elliott & Elliott, PA
721 Olive St.
Columbia SC 29205

Darra W. Cothran, Esquire
Woodward, Cothran & Herndon
PO Box 12399
Columbia SC 29211

Mr. Martin H. Bocock, Jr.
Director-External Affairs SC Sprint
Sprint
1122 Lady St., Suite 1050
Columbia SC 29201

M. John Bowen, Jr. Esquire
McNair Law Firm, PA
PO Box 11390
Columbia SC 29211

Nanette Edwards
ITC[^]DeltaCom Communications, Inc.
4092 South Memorial Parkway
Huntsville AL 35802

Mr. Stan J. Bugner
State Director
Verizon Select Services, Inc.
1301 Gervais Street, Suite 825
Columbia, SC 29201

Steven W. Hamm, Esq.
Richardson Plowden Carpenter & Robinson, P.A.
PO Drawer 7788
Columbia SC 29202

Craig K. Davis, Esquire
1420 Hagood Ave.
Columbia, SC 29205-1328

Elliott Elam, Staff Attorney
Acting Consumer Advocate
SC Department of Consumer Affairs
PO Box 5757
Columbia, SC 29250

Susan B. Berkowitz, Esquire
SC Appleseed Legal Justice Center
PO Box 7187
Columbia SC 29202

John M.S. Hoefer, Esquire
Willoughby & Hoefer
PO Box 8416
Columbia SC 29202-8416

Robert E. Tyson, Jr., Esquire
Sowell Gray Stepp & Lafitte, LLC
PO Box 11449
Columbia SC 29211

Robert D. Coble, Esquire
Nexsen Pruet Adams Kleemeier, LLC
PO Drawer 2426
Columbia SC 29202

Susan B. Berkowitz, Esquire
SC Appleseed Legal Justice Center
PO Box 7187
Columbia SC 29202



Carol Roof

June 25, 2004
Columbia, South Carolina